

IN THE COURT OF THE SENIOR CIVIL JUDGE AT NARAYANPET

Present: Smt.R.M.Subhavalli,
Senior Civil Judge,
Narayanpet

Tuesday, this the 30th day of June, 2020

A.S No.01 of 2018.**Between:-**

1. Chellapuram Chennappa s/o Sayappa,
Age 45 yrs.
 2. Chellapuram Devamma w/o Chennappa,
Age 42 yrs.
 3. Chellapuram Ramesh s/o Chennappa,
Age 25 yrs.
 4. Savari Laxmaiah s/o Venkataiah,
Age 25 yrs.
- All r/o Lagcherla village and Bomraspet
mandal Dist. Vikarabad.

....Appellants/defendants

And

1. Ananthamma w/o Ramulu,
Age 47 yrs.
 2. Sawari Laxmaiah s/o Venkataiah,
Age 25 yrs.
- Both r/o Lagcherla village and Bomraspet
mandal Dist. Vikarabad.

....Respondents/plaintiffs

This is an appeal suit coming before me on 22-06-2020 in the presence of Sri M. Chenna Reddy, Advocate for the Appellants. The respondents are set exparte. And the matter having stood over for consideration till this day this Court delivered the following.

ORDER [EXPARTE]

1. This appeal has been preferred by the unsuccessful defendants in O.S.No.16 of 2009 dated 29-11-2017 on the file of the Junior Civil Judge, Kodangal challenging the Judgment and Decree. Before going to take down the grounds of appeal it is necessary to look at the pleadings and the findings of the learned Junior Civil Judge, Kodangal. The parties herein shall be referred as plaintiffs defendants respectively to avoid confusion.

2. The averments, in brief, of the plaint are:

The defendant No.1 is the husband of the defendant No.2, defendant No.3 is the son of the defendants No.1 and 2, defendant No.4 is distant relative and strong supporter to the defendants No.1 to 3. The plaintiff is the owner and possessor of the plot admeasuring east-west 36 feets, north-south 39 feets total 1404 sq. feets equallent to 156 sq. yards in Sy.No.328/E situated at Lagcherla village in Bomraspet mandal. The plaintiff has purchased the suit plot from Harijan Bheemamma r/o Lagcherla village with a consideration of Rs.16000/- through registered sale deed dated 5-3-2009 vide document No.1907 of 2009. The vendor Harijan Bheemamma after receiving entire consideration amount delivered the physical possession of suit plot in favour of the plaintiff. Since the date of purchase the plaintiff is in actual possession with the knowledge of the defendants and others. The plaintiff constructed upto basement level in the suit after obtaining the construction permission from Grampanchayat, Lagcherla, then the defendants without any rights, with the collusion of the ill wishers of the plaintiff, Sarpanch, Grampanchayat, Lagcherla came to the suit plot on 18-3-2009 at about 10.00 A.M. and tried to stop the construction. The plaintiff with the help of others sent out the defendants from the suit plot. While leaving, the defendants openly threatened that they will occupy the suit plot at any time. Hence the plaintiff approached the Hon'ble court to restrain the defendants by granting perpetual injunction order against the defendants.

3. Per contra, the defendants filed their written statement as under:

In reply to para No.1 the defendants admit the relationship of defendants No.1 to 3 and denied that the defendant No.3 is their

distant relative and strong supporter to them, but he is a mason by profession, and denied the contents of para 2 of plaint that the plaintiff is the owner and possessor of the suit plot admeasuring east-west 36 feets, north-south 39 feets total 1404 sq. feets [equallent to 156 sq. yards] in Sy.No.328/E situated at Lagcherla village in Bomraspet mandal.

Further in reply to para No.3 of the plaint, it is denied that the plaintiff purchased the suit plot from Harijan Bheemamma r/o Lagcherla village with a consideration of Rs.16000/- through registered sale deed dated 5-3-2009 vide document No.1907 of 2009 and denied that the vendor Harijan Bheemamma after receiving entire consideration amount delivered the physical possession of suit plot in favour of the plaintiff, further denied that since from the date of purchase the plaintiff is in actual possession with the knowledge of the defendants and others, and denied that the plaintiff filed application before Grampanchayat for construction of house and constructed upto basement level in the suit land after obtaining the construction permission from Grampanchayat, Lagcherla, then the defendants without any rights, with the collusion of the ill wishers of the plaintiff, Sarpanch, Grampanchayat, Lagcherla came to the suit plot on 18-3-2009 and tried to stop the construction. It is denied that the plaintiff with the help of others sent out the defendants from the suit plot. It is denied that while leaving the defendants openly threatened that they will occupy the suit plot at any time. It is denied that the plaintiffs will be suffer irreparable loss and cannot be compensated with any costs, if injunction not granted in their favour and denied that the defendants are not having any right over the suit plot and they are not in actual, physical possession, and the plaintiff is entitled to sue and the

defendants are liable to be sued.

The defendants further contended in reply to para 4 of plaint and denied that on 18-3-2009 at 10 A.M. they tried to stop the construction when the plaintiff constructing the house with the collusion of Sarpanch and others and denied that they threatened the plaintiffs that they will occupy the suit plot at any time even forcibly.

Further the defendants submitted factual matrix that the defendant No.1, husband of the plaintiff namely Challapuram Ramulu, Challapuram Anjilaiah and Challapuram Venkataiah are own brothers and they have divided their properties long back and at the time of partition the husband of the plaintiff had given to defendant No.1 the open plot in Sy.No.328 admeasuring East-west 12 yards, North-south: 13 sq. yards totaling to 156 sq. yards at Lagcherla village on free of costs and got executed an agreement to that effect and the said agreement herein filed. It is further contended that originally the husband of the plaintiff had purchased the said plot from one Harijan Bheemamma w/o Eshwappa r/o Lagicherla village and in partition the said Challapuram Ramulu the husband of the plaintiff had given the same to defendant No.1, and that they have been in continuous possession over the suit plot. Later, defendant No.1 obtained permission from the Grampanchayat, Lagicherla and constructed a house on the western side of the said suit plot in an half extent about 8 years ago and defendant No.1 have also constructed bath room on the corner of northern side of the suit plot for use and that the Grampanchayat has allotted a house number as H.No.2-100 so also the Revenue authorities have issued a house hold card in favour of defendant No.1 showing house No.2-100 and that they have been in continuous possession of the said suit plot and a house therein. Again

the defendant No.1 got permission from the Grampanchayat, Lagicherla village on 18-4-2008 for construction of a house on the southern side of the said plot and it was completed upto the basement level and these facts are very much known by the plaintiff and other villagers in the village.

It is further contended by the defendants that, one Harijan Bheemamma is not having any place in Sy.No.328 at lagicherla either to sell to the plaintiff or others. But the said Harijan Bheemamma got executed registered document in favour of the plaintiff fraudulently with dishonest intention to cause loss to defendants. They have constructed a house and basement abutting to it after obtaining permission from the Grampanchayat. The intention of the plaintiff is only to occupy the land of the defendant No.1. There is no cause of action to the plaintiff to file the suit. In fact the defendants are residing in the said house and after obtaining permission from the Grampanchayat, they have raised construction upto basement level, as such there is no question of their interference by them as alleged. The plan annexed to the registered sale deed is also created and bogus one. The plaintiff is put to strict proof of the same.

There is no prima-facie case and balance of convenience in favour of the plaintiff to grant injunction. There is no alleged plot as alleged in the registered sale deed and said plot is not in existence. Therefore, the question of interference by the defendants does not arise, only to grab away plots covered with basement, the plaintiff filed this false suit along with petition and the plaintiff also created false registered document. Moreover the plaintiff did not obtain any permission from the Grampanchayat though it is mandatory to start the construction thereon.

Further contended that, the defendant No.1 filed a private complaint against the plaintiff u/s 420 IPC and court referred the matter to the police, Bomraspet for investigation and it is pending. The main intention of the plaintiff is only to occupy the suit plot. Hence the defendants prayed the Hon'ble court to dismiss the suit with costs.

4. Considering the both side pleadings the learned trial court has framed the following issues.

1. Whether the plaintiff is entitled for perpetual injunction as prayed for?

2. To what relief?

5. The appellants/defendants herein have challenged the Judgment and decree in OS No.16 of 2009 on the following grounds:

a) That the Judgment decree passed by the learned Junior Civil Judge court is contrary to law, facts and records and against the principles of natural justice and the trial court utterly failed to consider and appreciate the documents filed by the appellants thereby came to erroneous conclusion. On the other hand the trial court has given much credence to the documents filed by the respondents who have no way concerned whatsoever with the suit plot.

b) That the documents Ex.B1 to B4 clinchingly establishes that the suit plot has been in possession of the appellants herein and there has been existing of house constructed by the appellants. But the trial court utterly failed to consider the cardinal principle which mandate for grant of equitable relief of injunction in favour of the respondent No.1. On this sole point of view only the trial court judgment and decree is not tenable in law and to be set aside.

c) The documents filed by them are not appreciated by the trial court and documents placed by the respondent No.1 were given much appreciation by trial court.

d) The trial court has given much weight to the oral evidence and

thereby came to erroneous conclusion, on this point alone the Judgment and decree is to be set aside.

Therefore the appellants prayed that the appeal is to be allowed by setting a side Judgment and decree, dated 29-11-2017 in OS No.16 of 2009 passed by the learned Junior Civil Judge, Kodangal.

7. Before learned Junior Civil Judge, Kodangal court on behalf of the respondents/plaintiffs adduced PW-1 to PW.3 evidence and also marked Ex.A1 to A3 marked on their behalf.

8. On behalf of the appellants/defendants side adduced DW-1 to DW-3 evidence and also marked Ex.B1 to Ex.B4 on their behalf.

9. Before Appellate court, both parties did not adduce any ocular or documentary evidence on their behalf. The respondents/plaintiffs remained set exparte on 28-3-2018.

10. Heard both the learned counsel for appellants/defendants as the respondents/plaintiffs are set exparte due to non appearance after receipt of summons.

11. Basing on the strength of the pleadings, this court now formulate the following points for determination:

- 1) Whether there is partition in between husband of plaintiff/respondent and defendant No.1 on 22-05-1990 and executed agreement is true, valid and binding on respondents/plaintiffs or not?
- 2) Whether the suit property fell into the share of appellant/defendant No.1 during partition in between husband of plaintiffs/respondents and appellant/defendant No.1?
- 3) As on the date of filing suit whether the plaintiff/respondent was in possession and enjoyment of suit schedule property by constructing basement or not?
- 4) If so, the Judgment and decree in OS No.16 of 2009 dated 29-11-2017 is liable to be set aside?

12. Before going to further once we look into the written arguments filed by the appellants/defendants and the respondents/plaintiffs are set exparte.

13. **Point No.1 and 2 :-** Perused the material available on record. The appellant/defendant No.1 contended before learned Junior Civil Judge, Kodangal, alleging in their pleadings that the husband of the respondent/plaintiff and himself, two brothers divided their properties long back and at the time of partition the husband of the plaintiff had given to defendant No.1 the open plot in Sy.No.328 admeasuring East-west 12 yards, North-south – 13 sq. yards totaling to 156 sq. yards at Lagcherla village, Bomraspet mandal on free of cost and got executed an agreement to that effect. The said agreement dated 22-5-1990 was not considered by learned Junior Civil Judge, Kodangal, even though the said agreement was unregistered, as per Sec.17 of Registration Act, but it can be used as an evidence of collateral purpose as provided in the proviso to sec. 49 of Registration Act.

14. Further the appellant/defendant not taken any steps either got it register or not tried to mark the same as Exbit. As such the learned Junior Civil Judge, Kondangal not look into the said agreement, but during trial the plaintiff/PW1 during her cross examination she admitted that her husband and D1 had partitioned their ancestral properties about 20 years back and also admitted that her husband got the ancestral house [not the suit plot] towards his share along with other properties. PW1 again admitted that the defendant No.1 did not get any share in such ancestral house but other properties.

15. The PW3 who is son of PW1 he too admitted that about 20 years back the defendant No.1, husband of PW1, Chellapuram Anjilaiah and Chellapuram Venkataiah are own brothers and they partitioned their ancestral properties, the PW3 denied that his father had executed an agreement alienating the rights over the suit plot in favour of defendant No.1. But PW3 said that his father had permitted the defendant No.1 to construct hut in Sy.No.328.

16. Again the PW3 said that suit plot is situated in Sy.No.328 and PW3 admitted that defendant No.1 also constructed part of the house in Sy.No.328/E, but PW3 admitted that defendant No.1 constructed house in Sy.No.328, the PW3 never whispered about Sy.No.328/E. But as per plaint schedule the Survey number shown as 326/E, but not 328/E.

17. Further the PW2 who is son of Bheemaiah vendor of plaintiff also admitted that the defendant No.1 had constructed a house about 15 years back, in half extent of land situated in Sy.No.328 and PW2 said that he does not know the extent of land in which the defendant No.1 had constructed the houses in Sy.No.328 and further the PW1 admitted that she again purchased the suit plot from Harijan Bheemamma, if there is already agreement of alienation took place in between PW1 husband and defendant No.1 pertaining to the suit plot prior to Exbit A1, why PW1 not disclosed reason for second time entered execution of the sale deed as in Exbit A1, that too having knowledge of the prior transaction in between her husband with the defendant/respondent No.1. Further PW1 admitted that the respondent/defendant no.1 residing in house No.2-100 and same is allotted by the Grampanchayat to the respondent/defendant No.1 for construction and house hold card also issued in his name

18. Further PW1 admitted that there is partition took place in between her husband and DW1, it shows that the said document is family settlement in between both with regard to transfer of suit property. PW1 not came with clean hands by suppressing the fact that the partition took place and through respondent/defendant No.1 pleadings it established that from Harijan Beemamma PW1 husband purchased the land and the said land alienated to the respondent/defendant No.1.

19. Once admitted facts need not be proved as per Evidence Act. The learned Junior Civil Judge, Kodangal court not considered the admissions of PW1 in favour of the respondent/defendant No.1 with regard to alienation of the suit property to the respondent/defendant No.1 and with regard title there is no issue framed, even though it is permanent injunction suit, there is serious dispute with regard to title of the suit schedule property and already partition took place in between both the brothers on 22-5-1990. So, from there till date against the said family settlement document not taken any steps by plaintiff to cancel such document. The said document is declaration of list of properties allotted which is subject matter of suit property.

20. The plaintiff/PW1 filed the suit for permanent injunction as it is equitable relief it has to be looked into both sides, who are in possession as on the date of filing of the suit.

21. **Point No.3:-** The PW1 produced the original registered sale deed and pahani as in Exbit A2 and A3 it disclosed Sy.No.328/E. With regard to that the learned Junior Civil Judge, Kodangal Judgment at 6th page in 8th para mentioned,

"In order to rebut the evidence of plaintiff, defendant No.1 is

examined DW.1. As per his testimony, in the partition, plot admeasuring 156 sq. yds. In Sy.No.328 fell to his share and that grampanchayat has assigned H.No.2-100 to it and he was issued household card besides aadhar card at H.No.2-100 and that plaintiff is not the owner of suit plot and that the question of interference by him does not arise at all. The same is also reiterated by evidence of DW.2 and DW.3 regarding the relationship of husband of plaintiff and defendant No.1 and also about the partition of their properties. From the evidence DW.1 to DW.3, it is clear that defendant No.1 is claiming ownership and possession of land in Sy.No.328 but not in Sy.No.328/E. Also there is no positive evidence to show that H.No.2-100 is assigned to the house in Sy.No.328/E and that it fell to his share in the partition. Plaintiff's case is that she is in possession of plot admeasuring 156 sq.yds in Sy.No.328/E but whereas, it is defendants case that D-1 is owner and possessor of H.No.2-100. Even the documents filed in support of the claim of defendants i.e. Exbit B1 to B4 also shows that D-1 is the possessor H.No.2-100 but not plot in Sy.No.328/E, besides that Exbit B1 reveals that it is issued by Sarpanch and that signature and boundaries on it appears to be altered and ambiguous. Though no permission issued by grampanchayat is placed by plaintiff, she has filed Exbit A1 registered sale deed to show her possession over the plot admeasuring 156 sq. yards in Sy.No.328/E, which is suit plot. Admissions by PW1 to PW3 that D-1 constructed house is also in respect of house in Sy.No.328 but not in sy.No.328/E and that D-1 is in possession of H.No.2-100".

If it so, but in plan annexed to Exbit B1 House No.2-100 in that also mentioned existing suit property is on southern side. Pw1 admitted that the defendant No.1 constructed bath room on southern

side, and in the plan reflects on northern side there is construction of bath room. The prima-facie for proving as on date PW1 was in possession and enjoyment of suit schedule property, for that except Exhibit A2 and A3, only documentary evidence which are secured subsequently of filing of suit, but there is no supportive ocular evidence. Further entries in revenue records alone does not create its title and not created any right. Further PW.1 and PW.3 admitted that the D1 also constructed the house in Sy.No.328 and PW3 said that D.1 is residing in the house constructed by him in Sy.No.328, again PW3 said that they have not raised objection for the house constructed by D1 and its open place. As seen from record the total extent of Sy.No.328 is 156 sq. yds, when there is ambiguity regarding title of property in between both parties. There is specific dispute against the title in between PW1 and the defendant No.1. **In these circumstances by relying on Hon'ble Apex Court judgment in Anathula Sudhakar Vs. Buchi Reddy reported in AIR 2008 in 17th para 'c'** mentioned as follows:

(a) "Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter".

[b] "As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established

on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession”

[c]” But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific or implied as noticed in Annaimuthu Thevar [supra] Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction”.

22. The plaintiff/PW1 not amended their plaint with regard to Survey number of suit property as there is ambiguity with regard to Exhibit A2 and A3, as in Exhibit A2 and A3 connected with Sy.No.328/E and plaint schedule property discloses Sy.No.326/E. PW3 who is son of plaintiff clearly said that his father permitted defendant No.1 to construct hut in Sy.No.328 and the PW3 clearly admitted that suit plot situated in Sy.No.328 and D.1 constructed house in Sy.No.328 and PW.3 also said the D.1 residing in the house constructed by him in Sy.No.328. PW1 also not specifically mentioned on which date the defendant/respondent No.1 interfered her possession and threatened her with dire consequences and he will occupy the same. The burden is on plaintiff to prove that the Sy.No.328 is having sub numbers as per Exhibit A1 in Sy.No.328/E boundaries are different with boundaries of Sy.No.328. Further in her cross examination PW1 specifically said that

she does not know on which date, time, the defendant/respondent No.1 interfered with the suit plot. PW1 said that she gave police complaint and also said that same copy filed before the court. But as per the record there is no such evidence available on record regarding title, as such a full fledged adjudication had to be done regarding title.

23. **Point No.4:-** As discussed supra, this court has come to conclusion that the interference of this court required and appeal is allowed by setting aside the Judgment and decree of OS No.16 of 2009 dated 29-11-2017 of the trial court.

24. In the result, the appeal is allowed with costs setting aside the Judgment and Decree passed in O.S.No.16 of 2009 dated 29-11-2017 on the file of the Junior Civil Judge, Kodangal.

Typed to my Dictation, corrected and pronounced by me in open court, on this the 30th day of June, 2020.

Sd/-

**SENIOR CIVIL JUDGE
NARAYANPET**

APPENDIX OF EVIDENCE.

(Witnesses Examined)

For Plaintiff:-

PW.1: Ananthamma.
PW.2: H. Narasimulu.

For Defendant:-

DW.1: Chennappa
DW.2: Golla Venkataiah
DW.3: Savari Venkataiah.

EXHIBITS MARKED

For Plaintiff:

Ex.A1: Original registered sale deed dated 5-3-2009
Ex.A2: certified copy of pahani for the year 2007-08
Ex.A3: certified copy of pahani for the year 2008-09

For Defendant:

Ex.B1: Grampanchayat permission along with plan, dated 18-4-2008
Ex.B2: 2 Nos photos along with CD
Ex.B3: House hold card of defendant No.1.
Ex.B4: Aadhar card of defendant No.1.

Sd/-

**SENIOR CIVIL JUDGE
NARAYANPET.**